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July 6, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20054

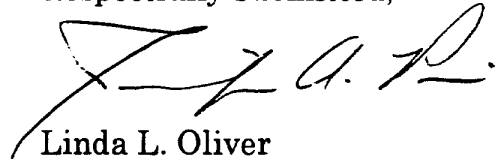
Re: Cellular Telecommunications Industry Association's
Petition for Forbearance From Commercial Mobile Radio
Services Number Portability Obligations,
WT Docket No. 98-229 and
Telephone Number Portability, CC Docket No. 95-116 ✓

Dear Ms. Salas:

Enclosed for filing in the referenced proceedings on behalf of the Telecommunications Resellers Association ("TRA") are an original and 11 copies of the Reply to the Oppositions of AT&T Wireless Services, Inc., and the Cellular Telecommunications Industry Association to TRA's May 27, 1999, Petition for Reconsideration of the Commission's February 9, 1999, Memorandum Opinion and Order. Please file stamp and return one copy of the Reply (additional copy provided) with our messenger.

Please contact me if you have any questions regarding this filing.

Respectfully submitted,



Linda L. Oliver
Jennifer A. Purvis
Counsel for Telecommunications
Resellers Association

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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From Commercial Mobile Radio Services)	
Number Portability Obligations)	
)	
and)	
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Telephone Number Portability)	CC Docket No. 95-116

REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

The Telecommunications Resellers Association ("TRA") hereby replies to the oppositions filed by AT&T Wireless Services, Inc., ("AT&T Wireless") and the Cellular Telecommunications Industry Association ("CTIA") (collectively, the "Opponents") to its May 27, 1999, petition for reconsideration of the Commission's February 9, 1999, Memorandum Opinion and Order ("the Forbearance Order") in the above-captioned dockets. 1/

AT&T Wireless and CTIA offer nothing in their oppositions to bolster the Forbearance Order's unsupported and erroneous analysis under the Section 10 test. In essence, CTIA and AT&T Wireless assert that the Forbearance Order is

1/ Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, and Telephone Number Portability, CC Docket No. 95-116, FCC 99-19 (rel. Feb. 9, 1999), 64 Fed. Reg. 22562 (April 27, 1999) ("Forbearance Order").

supportable because: (1) there is adequate competition in the commercial mobile radio services ("CMRS") market, (2) the lack of wireless number portability does not constitute a barrier to competition, and (3) the Commission did not need to consider the merits of TRA's alternative LRN-Relay wireless number portability method because the Commission has already considered other similar proposals in the past. CTIA and AT&T Wireless, however, fail to address in their oppositions the many flaws that TRA has demonstrated in their assertions and in the Commission's forbearance analysis.

I. THE OPPONENTS PROVIDE NO NEW JUSTIFICATION FOR THE CONCLUSION THAT WIRELESS NUMBER PORTABILITY IS NOT NECESSARY TO ENSURE REASONABLE RATES AND PRACTICES.

CTIA and AT&T Wireless proclaim that there is adequate competition in the CMRS market and thus that wireless number portability is not necessary to ensure reasonable rates and practices by CMRS providers. ^{2/} TRA has already pointed out, however, the Personal Communications Industry Association's ("PCIA's") conclusions that the CMRS market remains "extraordinarily concentrated" and that PCS operators continue to have only minimal market share in the top 200 markets. ^{3/} CTIA states that it "disagrees with PCIA's analysis" and

^{2/} AT&T Wireless Opposition (filed June 25, 1999) at 2; CTIA Opposition (filed June 25, 1999) at 5.

^{3/} TRA Petition for Reconsideration (filed May 27, 1999) at 9-10, citing Reply Comments of the Personal Communications Industry Association ("PCIA") filed in 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless

contends that PCIA has contradicted these statements by stating that competition in the mobile sector is growing. ^{4/} CTIA and AT&T Wireless also point to the Fourth CMRS Competition Report to support their claims that competition in the CMRS market is adequate. ^{5/}

The presence of some growth in competition, however, in no way contradicts PCIA's correct conclusions that the CMRS market remains highly concentrated. Indeed, the Fourth CMRS Competition Report makes clear that the increases in competition in the CMRS market are not as large as CTIA and AT&T Wireless suggest. The Fourth CMRS Competition Report indicates that competition did not grow as fast between 1998 and 1999 as it did between 1997 and 1998, and that the level of network deployment has not changed substantially since June 1998. For example, the Report states that the deployment of networks by broadband PCS and digital SMR operators has not "resulted in bringing competition to as many new markets as last year." ^{6/} The Report also states that while new entrants have made some progress in building out their networks, "[i]n

Telecommunications Carriers, WT Docket No. 98-205, et al, filed Feb. 10, 1999, at iii, 8.

^{4/} CTIA Opposition at 10.

^{5/} CTIA Opposition at 6; AT&T Wireless Opposition at 4, n.6, citing Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Fourth Report, FCC 99-136 (rel. June 24, 1999) ("Fourth CMRS Competition Report").

^{6/} Fourth CMRS Competition Report at 5.

gross terms, this increase is not a tremendous change from the level of deployment described in the Third Report.” 7/ The Fourth CMRS Competition Report also concludes that “there is still considerable room for further competitive development” in the CMRS market and that “there is still much progress that remains to be made.” 8/

There is little support, therefore, for claims that competition in the CMRS market is sufficient to justify forbearance from the wireless number portability requirement. CTIA and AT&T Wireless’ unsupported assertions cannot justify the Forbearance Order’s failure to evaluate the additional competition that wireless number portability would create and the impact that the loss of that competition would have on the reasonableness and nondiscriminatory nature of rates under this first prong of the forbearance test.

II. THE OPPONENTS FAIL TO PROVIDE ANY SUPPORT FOR THE FORBEARANCE ORDER’S ERRONEOUS CONSUMER PROTECTION ANALYSIS.

The Opponents’ contentions that the lack of wireless number portability is not necessary for the protection of consumers 9/ are directly undercut by their own statements. For example, their contention that consumers do not care about the inability to keep their wireless numbers when switching to new

7/ Id. at 19.

8/ Id. at 63.

9/ CTIA Opposition at 6-11; AT&T Wireless Opposition at 5-6.

carriers 10/ are belied by their own correct explanation that wireless number portability enhances competition by making it easier for consumers to switch among carriers. 11/ Indeed, AT&T Wireless concedes that “Congress intended for number portability to spur competition by enabling consumers to retain their phone numbers and, thus, switch more easily among service providers.” 12/ Furthermore, the Fourth CMRS Competition Report’s conclusions that competition in the CMRS market is not increasing as rapidly as it has in the past, and that much progress remains to be made, directly contradict CTIA and AT&T Wireless’ claims that the lack of wireless number portability has no effect on the development of competition.

CTIA and AT&T Wireless also provide no factual support for their contentions that consumers are not concerned about wireless number portability. As TRA made clear in its petition for reconsideration, the Forbearance Order’s reliance on the self-serving assertions of industry commenters and flawed trade press surveys do not justify the Forbearance Order’s conclusion that wireless number portability is not necessary for the protection of consumers. 13/ The reality is that consumers may not yet appreciate the benefits of number portability for either wireline or wireless services, but once number portability is implemented,

10/ CTIA Opposition at 8-9; AT&T Wireless Opposition at 5.

11/ See CTIA Opposition at 6-8; AT&T Wireless Opposition at 2.

12/ AT&T Wireless Opposition at 2.

13/ TRA Petition for Reconsideration at 12.

with the increased competition it will make possible, the consumer benefits should become obvious and palpable.

Moreover, contrary to the claims of AT&T Wireless, 14/ the Forbearance Order applied an incorrect standard under this second prong of the forbearance test. As TRA demonstrated in its petition for reconsideration, 15/ asking whether adherence to the current implementation schedule for wireless number portability “is necessary *to prevent affirmative harm* to consumers” is not the standard set forth under Section 160(a)(2). 16/ Rather, Section 160(a)(2) establishes a different and much higher standard, namely, whether the challenged regulation “is not necessary for the protection of consumers.” 17/

**III. THE OPPONENTS FAIL TO REFUTE TRA’S
DEMONSTRATION OF THE DEFICIENCIES IN THE
FORBEARANCE ORDER’S PUBLIC INTEREST ANALYSIS.**

Neither CTIA nor AT&T Wireless adequately respond to the deficiencies identified by TRA in the Forbearance Order’s public interest analysis under Section 10. First, CTIA provides absolutely no factual support for the assumption, erroneously relied upon by the Forbearance Order, that deferring investments in the implementation of wireless number portability will generate

14/ See AT&T Wireless Opposition at 6.

15/ TRA Petition for Reconsideration at 11-12.

16/ Forbearance Order at ¶ 22.

17/ 47 U.S.C. § 160(a)(2).

funds that CMRS providers will actually use for additional network build-outs and upgrades, rather than for other purposes. 18/

Second, CTIA and AT&T Wireless do not supply any justification for Forbearance Order's unsupported refusal to consider the merits of TRA's alternative LRN-Relay wireless number portability method. For example, they repeat the Forbearance Order's explanations that the Commission has considered other similar proposals in the past and that it has doubts as to whether TRA's alternative method could be developed and implemented by the originally scheduled implementation deadline. 19/ They do not dispute, however, that the merits of TRA's proposal were never actually examined or evaluated. Rather, the Forbearance Order simply rejected a method that would have been cheaper, faster, and better than any of the currently proposed methods based on the past review of *other* proposals and on unsupported *doubts* about how quickly TRA's alternative method could be implemented.

In short, CTIA and AT&T Wireless failed to fill the gaps in the Forbearance Order's deficient public interest analysis.

18/ See CTIA Opposition at 5.

19/ CTIA Opposition at 12-13; AT&T Wireless Opposition at 7.

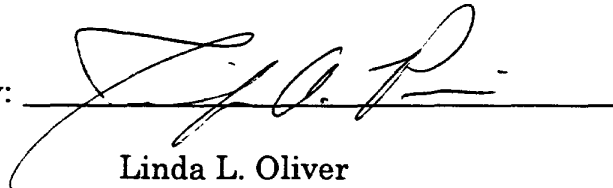
CONCLUSION

For the foregoing reasons, and for the reasons set forth in TRA's Petition for Reconsideration, the Commission should grant reconsideration of the Forbearance Order and reinstate the March 31, 2000 deadline for implementation of wireless number portability.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS
ASSOCIATION

By: _____



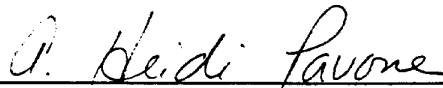
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July 6, 1999

CERTIFICATE OF SERVICE

I, A. Heidi Pavone, hereby certify that a copy of the foregoing Reply to Oppositions to Petition for Reconsideration of the Telecommunications Resellers Association filed in WT Docket 95-116, was served by hand delivered (where indicated) or by first class mail upon the following:



A. Heidi Pavone

Dated: July 6, 1999

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